



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom L. Beauchamp
Secretary of State
Austin, Texas

Dear Sir:

Attention Claude A. Williams
Assistant Secretary of State

Opinion No. 0-1233

Re: Is the local attorney violating the Unauthorized practice Act by filing the papers described for C. T. Corporation which is not authorized to practice law in Texas?

We are in receipt of your letter of August 5, 1939, in which you call our attention to the following situation, and request our opinion in connection therewith:

"On July 14, 1939, in answer to certain questions propounded by this office concerning the C T Corporation System, you held that the C T Corporation System was not authorized to represent corporations in obtaining permits to do business in Texas and in assisting corporations to incorporate under the laws of the State of Texas.

"The Corporation Trust Company and the C T Corporation System now seek to present these charters and other corporate papers through a local attorney here in Austin; in effect, they mail the papers to him and he in turn presents them to this office for filing. They pay him a fee for presenting these papers.

"We request that you refer to your Opinion No. 0-977 of July 14, 1939, and that you answer these questions:

Honorable Tom L. Beauchamp, Page 2

"1. Is the local attorney violating the Unauthorized Practice Act by filing these papers for and on behalf of this corporation which is not authorized to practice law in the State of Texas?

"2. Would this office be authorized to refuse to permit this attorney, or any other attorney, to file applications for permits of foreign corporations to do business in Texas and other corporate papers for the C T Corporation System or the Corporation Trust Company or any other corporation attempting to practice law in violation of our Penal Code?"

In Opinion No. 0-977 of this department by Honorable Ardell Williams, it was held, among other things, that the drawing and filing of applications for permits to do business in Texas on behalf of foreign corporations by the C. T. Corporation System, a Delaware corporation, at the instance and request of members of the bars of foreign states, constitutes the practice of law by said corporation, and that such acts are unlawful and a violation of Article 430a, Vernon's Penal Code, namely, the Unlawful Practice Act of Texas.

The first paragraph of Section 3 of Article 430a was the principal basis of the above ruling. It reads as follows:

"It shall be unlawful for any corporation to practice law as defined by this Act or to appear as an attorney for any person other than itself in any court in this State, or before any judicial body or any board or commission of the State of Texas; or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall prepare corporate charters or amendments thereto, or other legal documents not relating to its authorized business, or draw wills; or hold itself out in any manner directly or indirectly as being entitled to do any of the foregoing acts; provided, that the foregoing shall

Honorable Tom L. Beauchamp, Page 3

not prevent a corporation, person or association of persons from employing an attorney or other agent or representative in regard to its own affairs in any hearing or investigation before any administrative official or body."

It now appears that the C. T. Corporation System, which we assume includes the Corporation Trust Company, is seeking to do indirectly what amounts to an illegal act for it to do directly, i.e., presenting to the Secretary of State the applications of foreign corporations for permits to do business, and other corporate papers, through a local attorney in Austin. The local attorney is not representing the C. T. Corporation System in respect to its own business in a strict sense of the word. He is rather handling for them as a more or less routine matter business of certain clients of the C. T. Corporation System, i.e., filing of papers and other corporate instruments, which it is illegal for the corporation itself to transact.

The C. T. Corporation System, since it is not employing an attorney "in regard to its own affairs", is not within the purview of the following proviso in the first paragraph of Section 3 of Article 430a, above quoted:

"...provided, that the foregoing shall not prevent a corporation, person or association of persons from employing an attorney or other agent or representative in regard to its own affairs in any hearing or investigation before any administrative official or body."

Section 7 of Article 430a, supra, provides:

"Any agreement by any person, corporation, or association in violation of this Act shall be illegal and such person, corporation, or association shall not be able to recover for any services rendered in violation of this Act, either on the contract or a quasi-contractual obligation. If any person, corporation, or association of persons shall, by any act or omission in violation of this Act, cause any loss, damage, or injury to

Honorable Tom L. Beauchamp, Page 4

any person, corporation, or association of persons, such persons, corporation, or association of persons shall be liable in actual damages therefor to any person, corporation, or association of persons who sustained any such loss, damage or injury; and such liability shall be absolute and not dependent upon any question or showing of want of skill, care or diligence."

If the above section is not aimed at such a situation as we confront in this instance, we fail to appreciate the purpose of its enactment. Obviously the C. T. Corporation System and the local attorney have entered into an "agreement . . . in violation of the Act". The whole tenor and objective of the Unlawful Practice Act are contravened by such an arrangement.

Of course, by "any agreement . . . in violation of this Act" is meant primarily the contract between the client and the corporation practicing law in violation of the Act, but the scope of the phrase is wide enough to embrace an arrangement such as we have before us. The right of the local attorney to represent a legitimate client is unquestioned. He has no right to aid and abet a client in violation of the law of this State.

The local attorney occupies the status of an agent or representative of the corporation, appointed because of his law license, for the purpose of circumventing the purpose of a wholesome statute.

Presidio County vs. Shock, 24 Civ. App. 622,
60 S.W. 287.

"It is well understood that the relation of attorney and client is a relation of agency, and in its general features is governed by the same rules which apply to other agencies."

Of course, the attorney, as agent of his principal, is authorized to practice law, whereas his client is not, but it is against public policy for the attorney to assist his client in the violation of a penal law of the State.

Honorable Tom L. Beauchamp, Page 3

The situation at hand is similar to that in which a second contract grows out of, and is connected with, a prior illegal contract, with the illegality of the prior contract entering into the new contract and rendering it illegal.

It is our opinion that the local attorney is violating the Unauthorized Practice Act, that is, Article 430a, Vernon's Annotated Penal Code, by filing applications of foreign corporations for permits to do business in Texas for and on behalf of the C. T. Corporation System, which is unauthorized to practice law in the State of Texas. We further hold that the Secretary of State may deny an attorney the right to file applications for permits for foreign corporations to do business in Texas, and other corporate papers for the C. T. Corporation System, or the Corporation Trust Company, or any other corporation attempting to practice law in violation of the Penal Code of this State.

Trusting that the above fully answers your inquiries, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Dick Stout
Dick Stout
Assistant



DS:FG

APPROVED AUG 15, 1939

Gerald Mann
ATTORNEY GENERAL OF TEXAS

McH.